Workplace Safety and Insurance Appeals Tribunal

QUARTERLY REPORT

Production and Activity

For the Period

October 1st through December 31st, 2004

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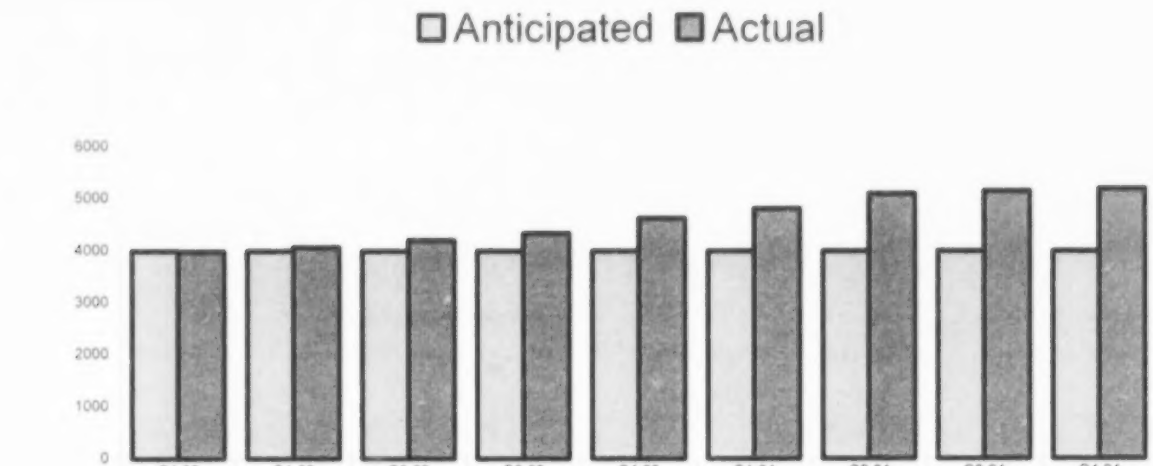
The Quarterly Report

Key Tribunal Activities

A) Tribunal Production

Productivity in Relation to Case Management Objectives



	Q4-02	Q1-03	Q2-03	Q3-03	Q4-03	Q1-04	Q2-04	Q3-04	Q4-04
Anticipated	4000	4000	4000	4000	4000	4000	4000	4000	4000
Actual	3988	4069	4207	4338	4632	4807	5101	5149	5194

Figure 1. Appeals Inventory, Anticipated vs. Actual

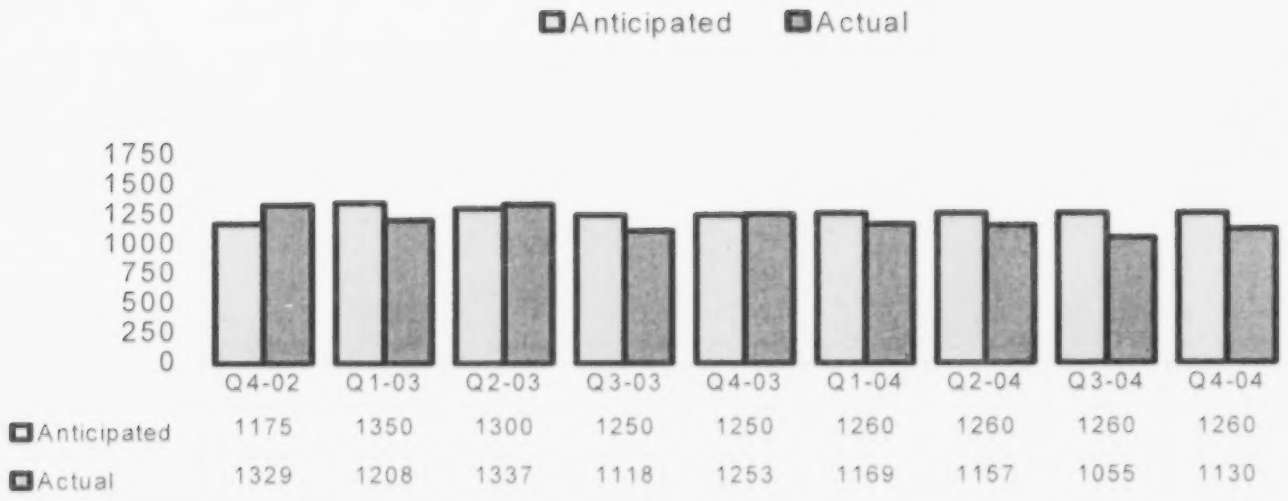


Figure 2. Incoming Appeals, Anticipated vs. Actual

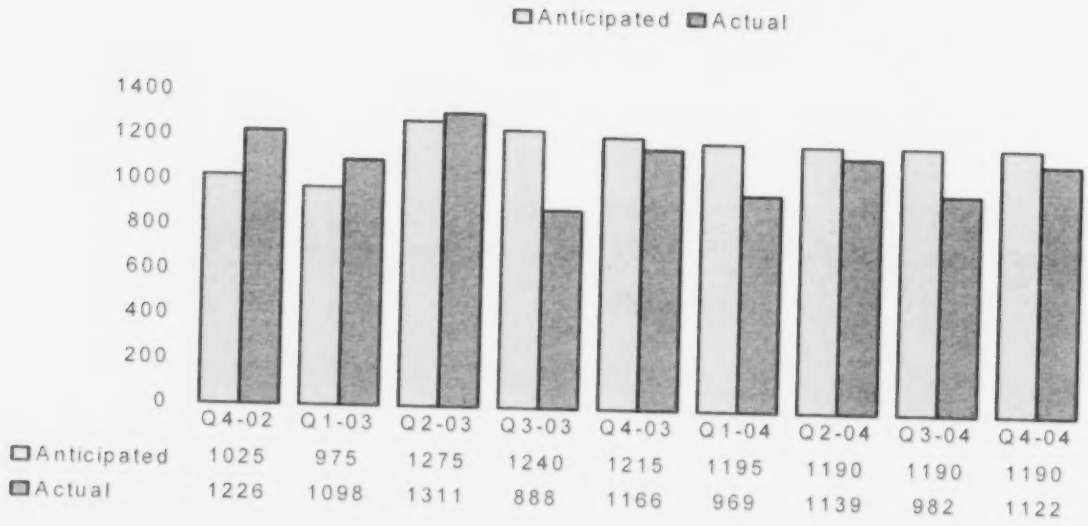


Figure 3. Dispositions. Anticipated vs. Actual

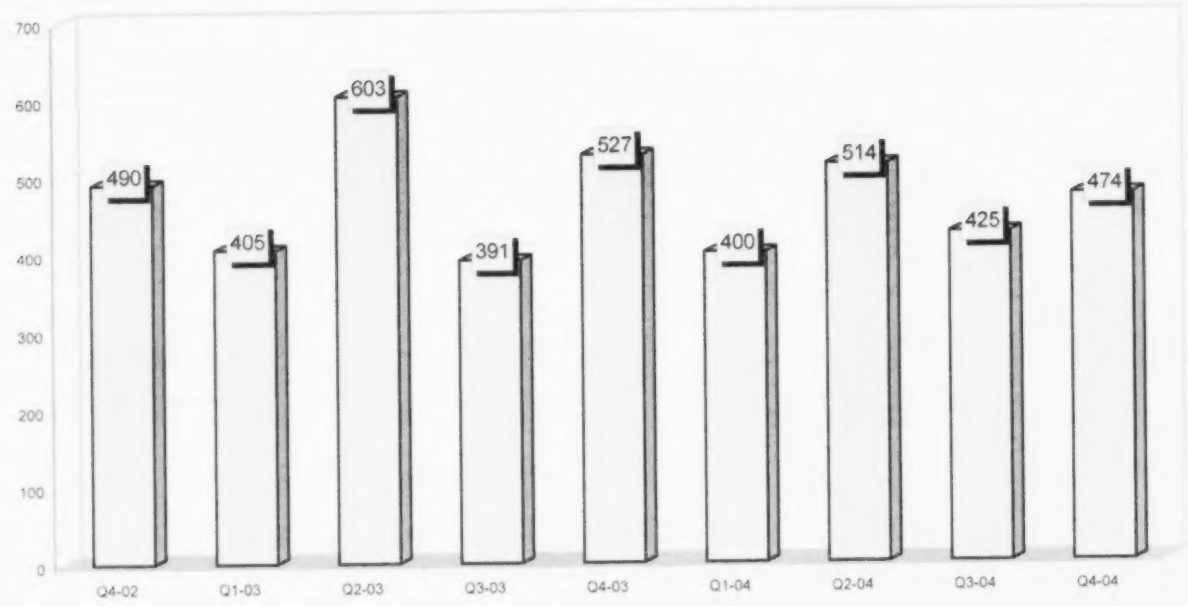


Figure 4. Dispositions from Pre-Hearing processes

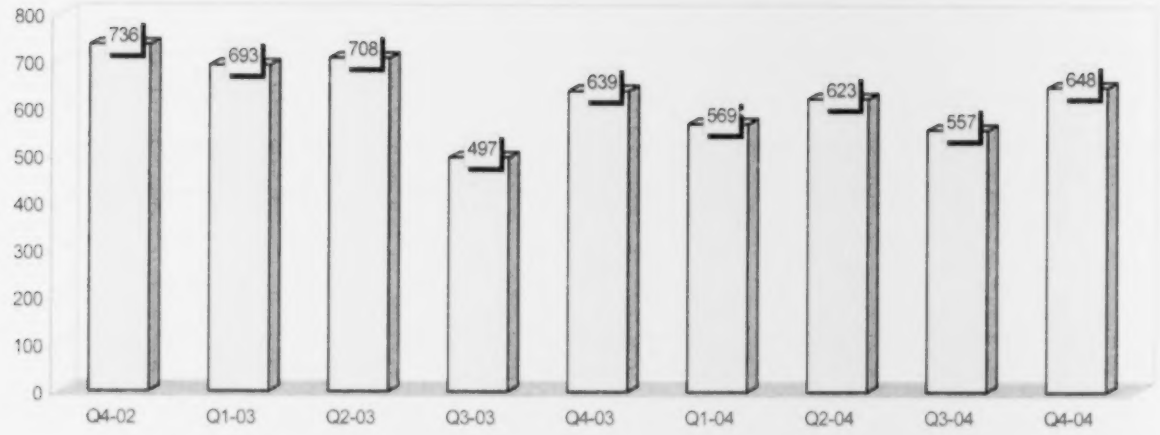


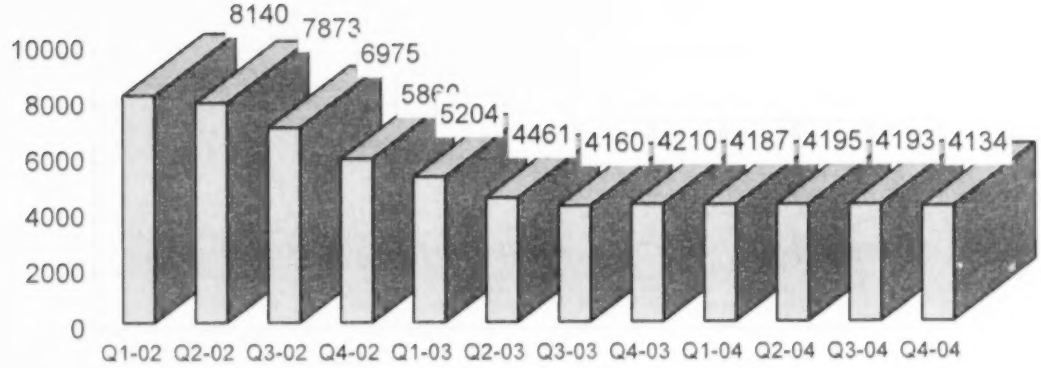
Figure 5. Dispositions from After Hearing processes.

Inactive Inventory. At the close of the fourth quarter 2004, the Tribunal's inactive inventory numbered 4,134, a decrease of 59 cases from the previous quarter.

During the fourth quarter, 155 appellants contacted the Tribunal to continue or re-activate their appeal, representing just 4% of the previous quarter's inactive inventory of 4,193. In the fourth quarter of 2004 reactivations numbered 355 cases. These figures, in addition to file closures, resulted in a net inactive inventory decrease of 59 cases.

Real timelines are taken into account in the Tribunal's business planning, and expected reactivations are included in projections on incoming appeals.

Inactive status was created in 1997 as a case management approach to provide appellants with time to prepare their appeal prior to hearing. This process is subject to the Tribunal's Practice Direction on Inactive Files.



Inactive Inventory Q1 2002 to Q4 2004

B) Communications

C) Judicial Review Activity

After the Tribunal filed its record, counsel for the worker decided to abandon the judicial review in order to bring a further application for reconsideration.

7. Decision No. 1178/94 (September 27, 2294)

This right to sue application found the injured party was a worker, rather than an independent operator, and that the right of action was therefore taken away. Counsel for the worker has commenced an application for judicial review. The Tribunal has filed an appearance and is waiting for the applicant to order the transcripts so the Record may be filed.

8. Decision No. 609/95 (June 23, 1997)

This application for judicial review included a number of complex factual issues involving entitlement for a worker. The Tribunal prepared a draft Record which was over nine thousand pages. However, counsel for the worker failed to perfect the application within the time set out in the Rules, and during this quarter the application was dismissed by the Divisional Court. The applicant now seems to have retained new counsel, who is considering whether to attempt to revive the judicial review.

Other Court Actions

Kaufhammer v. Workplace Safety & Insurance Appeals Tribunal et al

The Tribunal, the Ministry of Labour, and the WSIB were sued by a worker for $500,000 in damages. The worker was self-represented. The reasons for the suit were not clear, but seemed related to the denial of his Tribunal appeal. The Attorney General agreed to represent the Tribunal and the MOL, and brought a motion to strike the action.

The motion was heard on December 4th, 2004. Justice Bacon has dismissed the worker's action. The endorsement states: "The plaintiff's claim for damages for 'wage loss', character assassination, and 'embarrassment' are not torts known to law. The statement of claim lacks the necessary elements for pleading fraud and false imprisonment as required under R.25.06(8) of the Rules of Civil Procedure. The statement of claim does not contain the material facts upon which he relies as required under Rule 25.10(1) of the Rules."

Szemyla v. Velli and Joselin

The worker had been injured on the job in 1988. The worker subsequently claimed entitlement for psychological benefits, which was denied by the WSIB. His appeal to the Tribunal was denied by a panel of Jewett, Shamess and Briggs in February 2005.

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D) Highlights of Decided Cases

facility is no longer accurate. The employers unsuccessfully requested a retroactive adjustment to the departure fee by way of appeal the issue to the Tribunal.

The Vice-Chair found that the Board's duty is to maintain the insurance fund so as not to burden unduly any class of [illegible] employers in future years (s. 96 WSIA); the duty is only that the effect on rates not be unduly. The Vice-Chair found that this issue raises issues one regarding the design of the Board's rate setting policies and assessment mechanisms and not any allocation that pertains to the relevant employers. Under the WSIA, section 123(2), the Tribunal does not have jurisdiction to consider matters under Part VIII of the Act. Only the Tribunal can consider the individual merits of the employer's appeals. It appeared that [illegible] Board policy is [illegible] accordance with its terms. The facts did not constitute exceptional circumstances and never illustrate the numerous, ongoing contingencies that may affect a business over time. The Vice-Chair dismissed the appeal.

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